

COMPARISON OF SEXUAL OFFENDER LEGISLATION

Prepared by: Ali Bovingdon, Assistant Attorney General
Department of Justice
444-9734

Senate Bill 156, Sponsor Senator Perry

Sentencing Provisions

Senate Bill 156 would create mandatory minimum sentences for the offenses of sexual intercourse without consent and sexual abuse of children. If the victim was 12 years of age or younger and the offender was 18 years of age or older at the time of the offense, the offender must be punished by a term of not less than 25 years, without possibility of parole, and not more than life imprisonment. If the offender is sentenced to less than life imprisonment, his or her term of confinement must be followed by a period of lifetime probation.

Registration Provisions

SB 156 is the most comprehensive of the sex offender legislation before the committee. It implements provisions of the Jessica Lunsford Act not already contained in current law and the provisions of the Adam Walsh Child Safety & Protection Act. While all of the bills address sentencing of sex offenders and create a mandatory minimum sentencing structure, SB 156 also proposes to amend the provisions of current law relating to how adult and juvenile sex offenders register in Montana and the registration provisions governing those offenders.

These changes are summarized in the fact sheet provided to the Committee by DOJ at the hearing. Importantly, offenders who are 18 or older and commit an offense against a youth who is 12 or younger would be required to be designated as level 3 offenders. Such offenders are required to verify their registration more frequently and information about them is subject to wider public dissemination. The following are some of the additional highlights of SB 156:

- Post photographs for all registered sex offenders;
- Amend the definition of sexually violent predator to include offenders who commit a sex offense against a victim who is 12 or under;
- Create registration provisions for homeless offenders;
- Clarify the registration provisions for juvenile offenders; and
- Require in-person verification of registration information and more frequent photographs of offenders.

Senate Bill 154, Sponsor Senator Laible

*F. Note - 32 offenses
Sentencing Provisions*

Senate Bill 154 would create a mandatory minimum sentencing structure for nine separate offenses. The intent of SB 154, as stated by the title, is to substantially adopt the penalty provisions of Florida's Jessica Lunsford Act. Jessica's law imposes mandatory minimums for all offenders convicted of a forcible sex act. SB 154 would:

- impose prison terms of not less than 25 years and not more than life, and probation for the rest of the offender's life if the offender is sentenced to less than life imprisonment. Unlike SB 156, SB 154 does not preclude the possibility of parole for offenders sentenced to the lesser term of 25 years, and
- in addition to the offenses covered in SB 154 (sexual intercourse without consent and sexual abuse of children), apply to the following offenses when committed by an offender who is 18 or older and the victim is less than 13 years of age: sexual assault, indecent exposure, deviate sexual conduct, incest, endangering the welfare of children, and ritual abuse of a minor.

Senate Bill 373, Sponsor Senator Kim Gillan

Sentencing Provisions

Senate Bill 373 would revise the sentencing structure for sex offenders. It would impose a mandatory sentence of 100 years on offenders convicted of sexual intercourse without consent or sexual abuse of children when:

- the victim was 12 years of age or younger;
- the offender was seven or more years older than the victim; and
- the offender was designated as a level 3 offender.

If all three of those elements were present, the offender must be punished by a term of 100 years, the first 25 years of which may not be deferred or suspended. Unlike Senate Bills 154 and 156, the mandatory minimum sentence structure for SB 373 could apply to juvenile offenders, depending upon the age of the victim and the offender at the time of the offense. Additionally, unlike SB 156, SB 373 does not automatically designate an offender as a level 3 offender if the offense was committed against a child victim (12 years of age or younger). As a result, the potential exists that offenders who commit an offense against a child victim would not be subject to the mandatory minimum provisions of the bill.

SB 273 would provide that offenders who are convicted of a sexual offense and designated as level 1 or level 2 sex offenders, may be punished by a term of not less than four years or more than the maximum penalty allowed by law. However the court would be required to suspend any portion of the sex offender's term of imprisonment that is greater than 10 years. As a result the potential exists for offenders to serve less time than they would under present law. Additionally, during the first four years of confinement, DOC may place offenders under this category in a residential sex offender treatment program in a correctional facility or program. If the offenders successfully complete the treatment program, the remainder of their sentence must be served on

probation. Senate Bills 154 and 156 do not directly address treatment and would leave treatment options to the discretion of DOC.

SB 373 would also require that any sentence greater than 10 years for a level 1 or 2 sex offender be suspended. This is a change from current law which allows for longer sentences (see sentencing chart) and does not mandate that any portion of the sentence be suspended. Deferral and suspension is currently left to the discretion of the court.

Under SB 373, in order to be eligible for parole, a sexual offender would be required to enroll in and successfully complete the prison's sex offender program and, if the offender was designated as a level 3 offender, enroll in and successfully complete the cognitive and behavioral phase of the prison's sexual offender program.